

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Petition of the State of Minnesota, Acting by and)
through the Minnesota Department of)
Transportation and the Minnesota Department of)
Administration for a Declaratory Ruling)
Regarding the Effect of Sections 253(a), (b), (c))
of the Telecommunications of 1996 on an)
Agreement to Install Fiber Optic Wholesale)
Transport Capacity in State Freeway)
Rights-of-Way)

CC Docket No. 98-1

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REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI) hereby submits its reply to comments filed in response to the petition filed by the State of Minnesota, acting by and through the Minnesota Department of Transportation and Department of Administration (State or Minnesota).¹ The record establishes that the State's proposal is discriminatory on its face and violates sections 253(a), (b) and (c) of the Telecommunications Act of 1996 (Act).

The majority of commentors are in agreement with MCI that the Commission should preempt as discriminatory and a barrier to entry, the State's proposal to grant exclusive access to the freeway rights-of-way to one entity, Stone & Webster Engineering Corporation (Developer). The commentors' that undertook a substantive analysis of the issues agree that, notwithstanding the State's assertion that the proposed exclusive access arrangement with the Developer is

¹ State of Minnesota, Acting by and through the Minnesota Department of Transportation and the Minnesota Department of Administration, Petition for Declaratory Ruling Regarding the Effect of Sections 253(a), (b), (c) of the Telecommunications Act of 1996 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way, (filed January 5, 1998) (State Petition).

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“functionally non-exclusive,”² the proposal is discriminatory and not competitively neutral.³

In stark contrast, the standardized letters submitted by several state departments of transportation offer only blanket support of the State’s proposal without undertaking any analysis of the significant potential for competitive harm or addressing the important ramifications of the State’s draconian proposal to bar access to the public rights-of-way to all but one entity. Such statements, absent pertinent analysis and full discussion of the issues, offers no assistance to the Commission in its efforts to enforce the provisions of the Act and therefore should be given no weight in the Commission’s deliberations. The need for expedited action is underscored, however, by those comments that indicated that other States are considering similar discriminatory exclusive access arrangements.⁴

As MCI stated in its comments, a new entrant that is excluded from accessing freeway rights-of-way to construct facilities in the entire state, obviously cannot then provide competitive local services.⁵ Denying access to rights-of-way necessary to construct facilities will prohibit a

² State Petition at 4.

³ See e.g., Comments of U S WEST, Inc., CC Docket No. 98-1 at 11 (filed March 9, 1998); Opposition and Request to Preempt of the United States Telephone Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, the Western Rural Telephone Association and the Competition Policy Institute, CC Docket No. 98-1 at 13 (filed March 9, 1989 (CPI/USTA/OPASTCO Opposition); Comments of the Association for Local Telecommunications Services, CC Docket No. 98-1 at 6 (filed March 9, 1998).

⁴ See Comments of Texas Department of Transportation, CC Docket No. 98-1, (March 2, 1998) (“[T]he Texas State Legislature passed a bill that included language to allow our department to enter into agreement with telecommunications providers for exclusive access to freeway rights-of-way.”).

⁵ Cf. TCI Cablevision of Oakland County, Inc., CSR-4790, FCC 97-331 at ¶ 97 (re. Sept. 19, 1997) (the Commission concluded that, absent a franchise from cities, telecommunications providers lack the legal authority to enter the market and are legally barred from providing service).

new entrant's ability to provide telecommunications service. The proposal would severely limit access to any available means of providing telecommunications services. Because the proposal would completely limit access to the freeway rights-of-way to entities other than the Developer, the Contract is discriminatory on its face.

Section 253(a) empowers the Commission to preempt state and local legal and regulatory requirements that impede competitive entry.⁶ As CPI and USTA explained, "it is the Commission's role to intercede when, as here, a state seeks to enter and control this competitive market by placing unreasonable and unnecessary restrictions on telecommunications service providers."⁷ The State's proposed Contract with the Developer directly affects access by telecommunications service providers to the public rights-of-way along the freeway, access to which telecommunications service providers must have on a nondiscriminatory and competitively neutral basis. It is particularly important to send a message to other states that this type of arrangement is blatantly discriminatory against competing telecommunications providers and is a barrier to entry. State and local governments that impose legal and regulatory requirements that are not competitively neutral are effectively erecting barriers that impede competitive entry.

⁶ State Petition at 4.

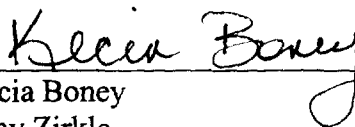
⁷ CPI/USTA/OPASTCO Comments at 13-14.

CONCLUSION

For the foregoing reasons, the Commission should preempt the State of Minnesota's proposed contractual arrangement.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION



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Dated: April 9, 1998

CERTIFICATE OF SERVICE

I, Mellanese Farrington, hereby certify that on this 9th day of April, 1998, I served by first-class United States Mail, postage prepaid, a true copy of the foregoing Reply Comments, upon the following:

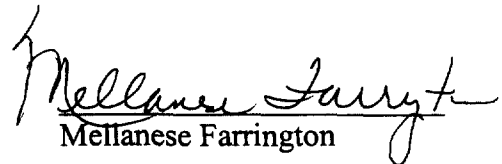
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